

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

Crl.MC.No. 466 of 2007()

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CC.1081/2003 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA  
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PETITIONER:ACCUSED

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OMANAKUTTAN,  
CHAKKALAKISHZKKATHIL,  
KUNNAM MURI,  
THAZHAKKARA VILLAGE, MAVELIKKARA,  
ALAPUZA.

BY ADV. SRI.P.VINODKUMAR

RESPONDENTS: COMPLAINANT

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THE STATE OF KERALA REP. BY  
THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 22/02/2007, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.466 of 2007**  
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Dated this the 22<sup>nd</sup> day of February, 2007

**ORDER**

The petitioner faces indictment in a prosecution under Section 326 I.P.C. On the date when the doctor and the Investigating Officer were examined as witnesses, ie. Pws 6 & 8, the petitioner's counsel could not be present in court and therefore they were not cross examined. The petitioner thereafter filed an application to recall those two witnesses by invoking the powers under Section 311 Cr.P.C. The learned Magistrate rejected that application holding that inconvenience of the counsel is no reason to afford an indulgent further opportunity to the petitioner. Accordingly, that petition under Section 311 Cr.P.C was dismissed.

2. The learned counsel for the petitioner submits that the rejection of the application to recall the witnesses is not justified at all. The plight of the accused may be realistically appreciated, it is prayed. The counsel had some personal inconvenience. The doctor and the Investigating Officer could not be cross examined except by the senior counsel. Arrangements for cross examination of other witnesses were made. In these circumstances, the bona fides of the petitioner and his counsel must have been appreciated by the learned Magistrate and further opportunity indulgently may be granted to the petitioner to cross examine Pws 6 & 8, it is prayed.

3. Notice has been given to the learned Public Prosecutor. I have heard the learned counsel for the petitioner. I am satisfied, in the facts and circumstances, of this case that though the order of the learned Magistrate cannot be held to be perverse, it must be seen realistically that for no fault of the petitioner, he has been virtually denied the opportunity to cross examine Pws 6 & 8. I am satisfied, that if Pws 6 & 8 are available, the petitioner can be granted an opportunity to cross examine those witnesses.

4. This Crl.M.C is, in these circumstances, allowed. It is directed that the learned Magistrate shall grant the petitioner a further opportunity to cross examine Pws 6 & 8 on condition that the petitioner deposits an amount of Rs.200/- for each witness in addition to the normal bata that will be payable by the petitioner before the learned Magistrate, within a period of 10 days from this date.

**(R.BASANT, JUDGE)**

rtr/-

